

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

WP(C).No. 10305 of 2006(B)

PETITIONER:

**MALATHY CHAMI, AGED 48,
W/O.CHAMI.A.K, CHINGERI TRIBAL COLONY,
AAYIRAMKOLLI, AMBALAVAYAL, WAYANAD.**

**BY ADV. SRI.K.S.MADHUSOODANAN,
SRI.T.V.JAYAKUMAR NAMBOODIRI.**

RESPONDENT:

**DISTRICT COLLECTOR,
WAYANAD.**

BY GOVERNMENT PLEADER SRI. M.R. SABU.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C). NO.10305/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. H & M2199/96 DTD. 27/06/1996 OF THE JOINT REGISTRAR, CO-OPERATIVE SOCIETY, WAYANAD.

EXT.P.2: COPY OF THE OF THE R.2. NO. 82/96-97/MM/GS/ROC/M-1749/96 DTD. 07/08/1996 GRANTED PERMIT FOR 6 MONTHS.

EXT.P.3: COPY OF THE N.O.C. ISSUED BY THE R.1. DTD. 30/12/2003 FOR THE PERIOD UP TO 30/12/2003.

EXT.P.4.: COPY OF THE PETITIONER'S APPLICATION FOR N.O.C. DTD. 31/03/2004 WITH ENDORSEMENTS OF THE DEPUTY COLLECTOR AND TAHSILDAR.

EXT.P.5: COPY OF THE N.O.C. ISSUED TO THE RESPONDENT TO BOSE SEBASTIAN BEARING NO. I.2/14814/2005 DTD. 16/06/05.

EXT.P.6: COPY OF THE JUDGMENT IN W.P.(C). 24373/05 DTD. 25/10/2005 OF THE HONOURABLE HIGH COURT.

EXT.P.7: COPY OF THE PROCEEDINGS OF DIST. COLLECTOR, WAYANAD DTD. 21/03/2006.

EXT.P.8: COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT IN C.C.C.

EXT.P.9: COPY OF THE SKETCH PREPARED BY THE TAHSILDAR, SULTHAN BATHERI.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

ANTONY DOMINIC, J.

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W.P.(C) No. 10305 OF 2006 B
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Dated this the 19th September, 2007

J U D G M E N T

The petitioner was operating a quarry in Survey No. 298/1A1A1A of Ambalavayal Village of Wayanad District. He was initially granted a permit and NOC which was valid upto 31-3-2004. He applied for its renewal by Ext. P4 and on the failure of the respondents to consider the same, a writ petition was filed as W.P.(C) No. 24373 of 2005. That writ petition was disposed of by this Court by Ext. P6 judgment. In pursuance to the directions contained therein the renewal application of the petitioner was considered and by Ext. P7 order, renewal has been declined on the ground that there are residential houses within 50 metres of the quarry and that if the quarry is allowed to be operated it will be a threat to the life and property of the residents in the area. It is impugning Ext. P7 that this writ petition is filed.

2. The main contention raised by the learned counsel for the petitioner is that there has not been a

proper identification of the property. According to him, the site in question is situated in a forest area and there are no residents in the neighbourhood. He would submit that if the property was identified with reference to village records, a wrong report, based on which the District Collector has issued Ext. P7, would not have been made. Counsel also makes reference to Ext. P9, a survey plan and contends that Ext. P7 is issued on an erroneous appreciation of facts.

3. I heard the learned Govt. Pleader also. This appears to be a case where the identification of the property has been done without reference to village records. Even from the affidavit filed in the connected contempt proceeding the District Collector had sought for extension of time mainly on the non-availability of revenue staff who are familiar with the work. Thus, prima facie it appears that some mistake has been committed in identifying the property. Petitioner is right in his statement that Ext. P9 survey plan also has not been taken into account since the same is not seen reflected in Ext. P7 order also. Thus to prevent miscarriage of justice I am satisfied

that the respondent needs to be directed to identify the property in respect of which the petitioner has sought renewal of NOC by submitting Ext. P4. While identifying the property and deciding his eligibility for NOC the respondent will avail of the service of the village staff who will carry out inspection and survey with notice to the petitioner. On this basis, a fresh report will be made to the respondent and on the basis of which the respondent will take a decision on Ext. P4. Accordingly, Ext. P7 will stand quashed and Ext. P4 will be reconsidered by the respondent in the light of the observations contained herein above. The steps as aforesaid shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this judgment.

Petitioner will make available to the respondent a copy of this judgment for compliance.

**ANTONY DOMINIC
JUDGE**

jan/-